

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(1102 Alexander Avenue)	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
Sheree Hunter, <i>Legal Owner</i>		
Maxim, LLC, <i>Contract Purchaser</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	<b>Case No. 2020-0040-SPHA</b>
* * * * *		

### **OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Sheree Hunter, legal owner, and Maxim, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm that a lot merger has not occurred with adjacent existing dwelling at 1100 Alexander Avenue (Lot 83). In addition, a Petition for Variance was filed pursuant to BCZR § 1B02.3.C.1 to permit an existing dwelling with a lot width of 50 ft. in lieu of the minimum required 55 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

The contract purchaser, Mr. Guadreault, appeared in support of the requests and was assisted by surveyor Benjamin Gary from the offices of John Mellema Surveyors, the firm that prepared the site plan. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning. They did not oppose the requested relief.

### **SPECIAL HEARING**

Mr. Gaudreault testified that he is a builder/developer. He has purchased the lot in question from Ms. Sheree Hunter, who also owns the adjoining lot at 1100 Alexander Avenue. Ms. Hunter has owned both parcels since 2007. According to the un rebutted testimony of Mr. Gaudreault, the

parcel in question has never had a structure on it or been used in any way to benefit the adjoining property at 1100 Alexander. In fact, Ms. Hunter has done nothing except cut the grass and perform other such maintenance. Photos of the site (Petitioner's Exhibit 2) show that there are numerous mature trees on the site and no structures. The mature trees indicate that there have never been structures of any significance on the site.

Based on this evidence I find that the subject lot has not merged with the lot at 1100 Alexander Avenue, and that it is a separate and discrete building lot. *See, Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43 (2007) (absent the construction of substantial structures or the intense use of a parcel by the owners of the adjoining parcel there is no merger of the parcels).

### VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

The subject property lies within a subdivision of similar narrow lots which predate the current zoning. The lot in question is 50 feet wide – 5 feet less than the 55 foot width required in a DR 5.5 zone. However, Mr. Gary explained that the proposed residence will be only 30 ft. wide and 40 ft. long so it will meet the side and rear setbacks. Further, the parcel is 7,500 sq. ft. so it far exceeds the minimum requirement of 6000 sq. ft. Further, Mr. Gary pointed out that numerous similar variances have been granted in the immediate vicinity of this property, including the two adjoining lots to the rear at 1103 and 1105 Handy Avenue.

Given the zoning overlay discussed above I find that the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because they would be unable to build the proposed residential structure. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is confirmed by the lack of community or County agency opposition.

THEREFORE, IT IS ORDERED this 26<sup>th</sup> day of **June, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to §500.7 of the BCZR to confirm that a lot merger has not occurred with the adjacent existing dwelling at 1100 Alexander Avenue (Lot 83), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to § 1B02.3.C.1 of the BCZR to permit an existing dwelling with a lot width of 50 ft. in lieu of the minimum required 55 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlw